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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,927	05/24/2001	Lee E. Cannon	29757/ AG32-CIP	2424

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EXAMINER

CHERUBIN, YVESTE GILBERTE

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 02/10/2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,927

Applicant(s)

CANNON ET AL.

Examiner

Yveste G. Cherubin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34,35,38 and 55-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34,35,38 and 55-62, 64-66 is/are rejected.
- 7) ☒ Claim(s) 63 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the Amendment filed November 24, 2003. It has been noted that claims 1-5, 7-8, 16 48-54 have been cancelled and claims 55-66 added.

Allowable Subject Matter

2. The indicated allowability of claims 5, 7, 18, 34-35, 38 is withdrawn in view of the new interpretation of the claims. Claims 5, 7, 18 have been cancelled. Claims 34-35, 38, 55-66 are being rejected under Pascal (US. Patent No. 6,287,202 – of record) and the newly found reference to Breeding (US Patent No. 6,019,379). Rejections based on the cited reference(s) follow.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 59 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Claim 59 recites ".....comprising automatically initially play at the second permitted rate of play irrespective of player input when the second permitted rate of play is permitted."

There is no support for this limitation in the specification. Clarification is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 62-63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 62 is ambiguous. Since there is no play initiation within that predetermined time interval, why would one set the system to have the automated minimum rate of play comprising a percentage of a standard rate of play within that predetermined time interval. This claimed limitation is unclear. As best understood, it is being read as ".....wherein the automated minimum rate of play comprises a percentage of a standard rate of play of at least one game of chance." Clarification is required.

Claim 63 is being rejected as being dependent upon rejected claim 62.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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Claims 34-35, 38, 55-61, 64-65 are rejected under 35 U.S.C. 102(a) as being anticipated by Pascal et al. (WO 98/00210).

As per claims 34-35, 60 Pascal discloses a tournament gaming system comprising a plurality of gaming devices, see abstract, 2nd line and configured to play game at variable rates of play, see abstract, lines 8-11. Pascal's system is configured to allow players to play at variable rate of play responsive to player input, page 3, lines 30-31. Pascal discloses initiating tournament play, page 7, lines 11-12 on at least one gaming device of the plurality of the gaming devices. Pascal discloses that during tournament play every time the play button is pushed a new play cycle is commenced, 3:67-4:1. Pascal further discloses during tournament play, the players will accumulate points by playing the game as fast as they possibly can or as fast as they choose to play, page 4, line 5 and section 4. With an understanding of the reference, as shown above, between cycles, a player may choose to play the tournament at a first permitted rate of play the first cycle and change the rate of play to a second permitted rate of play in response to a selected game outcome in the following cycle which means if a player realized that the chosen rate of play was too slow or too fast during the initial cycle, the player may change the rate to a slower or faster rate, accordingly, during the following cycle in order to comfortably play the game. As per claim 38, Pascal discloses running automatic play mode in response to expiration of a predetermined interval of time, page 7, 2nd paragraph. As per claim 55, Pascal discloses players starting and playing as many spins as possible in order to maximize the number of points earned, page 5, lines 9-10 and further discloses gaming machines being returned to their normal state when

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tournament period has elapsed or when a player reaches a predetermined tournament point goal, page 4 lines 24-27. This passage is deemed to meet the limitations as claimed since a plurality of spins/plays would be initiated prior to the players winning the game. As per claims 56-57, since Pascal allows players to choose their rate of play, the second permitted rate could be faster or slower depending on the player. As per claim 58, Pascal discloses the game of chance being a reel-type game, page 5, line 9. As per claim 59, Pascal discloses automatically initiating play in automatic mode, page 7 2nd paragraph. As per claim 61, Pascal discloses initiating automatic play mode at certain terminals when a player does not initiate play of the tournament game of chance within a predetermined time interval, page 7, 2nd paragraph. As per claim 64, Pascal discloses tendering a wagering for tournament play qualification, page 3, lines 16-21. As per claim 65, Pascal discloses that a machine must have a player playing or waiting to play in order to qualify for tournament play, page 4, lines 1-3.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pascal.

As per claim 62, Pascal discloses the claimed invention as substantially as shown above. However, Pascal fails to disclose the automated minimum rate of play

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comprising a percentage of a standard rate of play. Minimum, by definition, is the lowest possible amount or degree permissible on any rated scale, having the automated rate of play comprising a percentage of a standard rate of play would have been obvious and a matter of design choice. This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so in order to provide a better/higher/reasonable chance of winning to players.

b. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pascal in view of Breeding US Patent No. 6,019,374).

As per claim 66, Pascal discloses the claimed invention as substantially as explained above. However, Pascal fails to disclose qualifying for play in the tournament game in response to at least one selected game outcome. Breeding teaches a tournament system where players are qualified for tournament play in response to a game outcome, 10:4-13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the system as such in order to improve upon the system taught by Pascal by implementing the improvements detailed above because it would provide the system taught by Pascal with the enhanced capability of choosing the best players and therefore providing a more challenging gaming system.

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Allowable Subject Matter

6. Claim 63 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yveste G. Cherubin whose telephone number is (703) 306-3027. The examiner can normally be reached on 9:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, T. Walberg can be reached on (703) 308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 4, 2004

ygc



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